IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 382 OF 2007

Narendra Kumar Khetsi
and ors. ..Applicants

Vs.

1. Rekha Bipin Gogri
and anr. ..Respondents

Mr. Ramesh Jain and Mrs. Kusum Jain for applicants.
Mr. D.P. Adsule, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : August 10, 2007.

P.C.:

1. Heard the learned counsel for the applicants who are the accused in C.C. No.6021/SS/2005. It appears that during the trial of the complaint an application under Section 145(2) of the Negotiable Instruments Act, 1881 was submitted by the accused for directing the original complainant to step in the witness box as well as the power of attorney holder in support of her affidavit submitted by way of evidence. This application was allowed by the learned Magistrate and, therefore, the complainant filed Criminal

Revision Application No. 244 of 2006 which came to be allowed on 29/11/2006 by the learned Additional Sessions Judge.

2. It is contended by the learned counsel for the applicants that the complaint was filed through the power of attorney holder and she could not have any authority to step in the witness box and depose about the personal knowledge regarding the transaction concerning to the dishonoured cheque. It was further submitted that the power of attorney could not a witness in support of the complaint.

3. It is well settled that the complaint under Section 138 of the Negotiable Instruments Act, 1881 can be filed by the power of attorney holder and there is no bar for the same that such a holder cannot step in the witness box. It depends on the facts of each case and in a given case it is possible that the power of attorney holder may not have the personal knowledge regarding the transaction. However, in the instant case it was claimed that the power of attorney holder is the mother of the complainant and she had personal

knowledge of the transaction between her daughter and the applicants. At the same time, it is for the complainant to prove her case under Section 138 of the Negotiable Instruments Act, 1881. The accused does not have the right to file an application and call upon the complainant to examine his/her witness. The complainant has to stand on her own feet and if she fails to discharge her burden to prove the ingredients of Section 138 of the Negotiable Instruments Act, 1881, the complaint may fail.

4. The Sessions Court was, therefore, right in setting aside the trial court's order dated 25/1/2006. No interference is called for in the said order.

5. Hence, the petition is rejected summarily.

(B.H. Marlapalle,J.)